

AG Contract No.: KR 04-1411TRN  
ADOT ECS File No.: JPA 04-085  
Project NO.: RAM 202-C-516  
Project: SR 202L, Santan Freeway  
Section: Elliot Road ~ Baseline Road  
TRACS No.: H5915 03C  
Budget Source Item No.: 83006

INTERGOVERNMENTAL AGREEMENT

LANDSCAPE MAINTENANCE

BETWEEN

THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

THIS AGREEMENT is entered into 14th February, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes, § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The State and the City are in mutual agreement to landscape certain areas within the right of way of State Route (SR) 202L, from Elliot Road to Baseline Road, as shown on the Landscape Maintenance Exhibit attached hereto and made a part hereof, hereinafter referred to as the "Project". The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27372  
Filed with the Secretary of State  
Date Filed: 02/14/05  
Janice K. Brewer  
Secretary of State

By: Darryl D. Greenwald

## **II. SCOPE OF WORK**

### **1. The State will:**

- a. Prepare to State standards, design plans, specifications and other such documents required for construction bidding and construction and submit to the City for their review.
- b. Upon concurrence by the City, call for bids and award one or more construction contract(s) for the Project. Administer it and make all payments to the contractor(s), at its own expense.
- c. Be responsible for contractor claims for extra compensation due to delays or whatever reason attributable to the State.
- d. Upon completion of the Project, coordinate final inspections of the Project with the City for approval and acceptance of items the City will be responsible to maintain.
- e. Upon completion of the Project, maintain the landscaping and irrigation system, and pay for electrical power to operate the State's irrigation controllers, as designated on the attached Landscape Maintenance Exhibit.

### **2. The City will:**

- a. Review the design documents and provide comments and concurrence to the State. Such concurrence shall not be unreasonably withheld.
- b. Be responsible for any costs, for additional work requested by the City, associated with the Project and for any contractor claims for extra compensation due to delays or whatever reason, attributable to the City.
- c. Provide potable water in mains up to or within the State's right of way at its own expense.
- d. Authorize and pay or waive any water development fees.
- e. Furnish all potable water for the landscaping, and provide the water at the design pressures and quantities stated in the plans, during installation, construction phase, and all water thereafter necessary to properly maintain the landscape areas, all at City's expense.
- f. At the conclusion of the contractor's maintenance and warranty period referred to in the construction contract as Landscape Establishment, assume responsibility for maintenance of irrigation system as designated on the attached Landscape Maintenance Exhibit, including all testing, adjusting, repairing and operation of the irrigation system, furnish and pay for irrigation system electrical power all necessary to operate the City's irrigation controllers.
- g. At the conclusion of the contractor's maintenance and warranty period referred to in the construction contract as Landscape Establishment, assume responsibility for maintenance of the landscaping in areas designated on the attached Landscape Maintenance Exhibit. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping.

h. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic control shall adhere to the requirements of the Arizona Department of Transportation's Traffic Control Manual.

### **III. MISCELLANEOUS PROVISIONS**

1. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the said Project and related deposits or reimbursements; provided herein. However, any provisions for landscaping maintenance and electrical energy provided by the City and water designated on the attached Landscape Maintenance Exhibit provided by the City shall be perpetual. This Agreement may be terminated by either party at any time upon sixty (60) days written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said landscaping.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds.** Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Mesa  
City Manager  
P. O. Box 1466  
Mesa, AZ 85211-1466

10. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

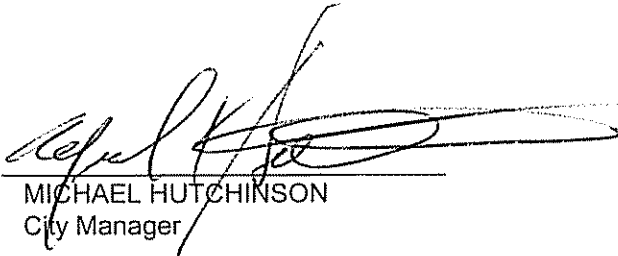
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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

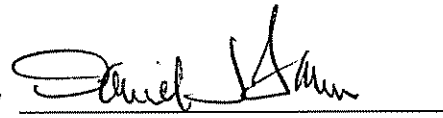
CITY OF MESA

STATE OF ARIZONA  
Department of Transportation

By

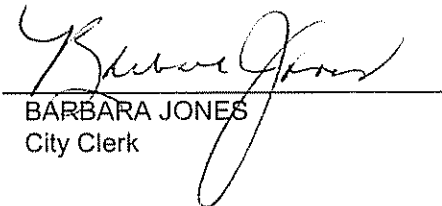
  
MICHAEL HUTCHINSON  
City Manager

By

  
DANIEL S. LANCE, P.E.  
Deputy State Engineer

ATTEST

By

  
BARBARA JONES  
City Clerk





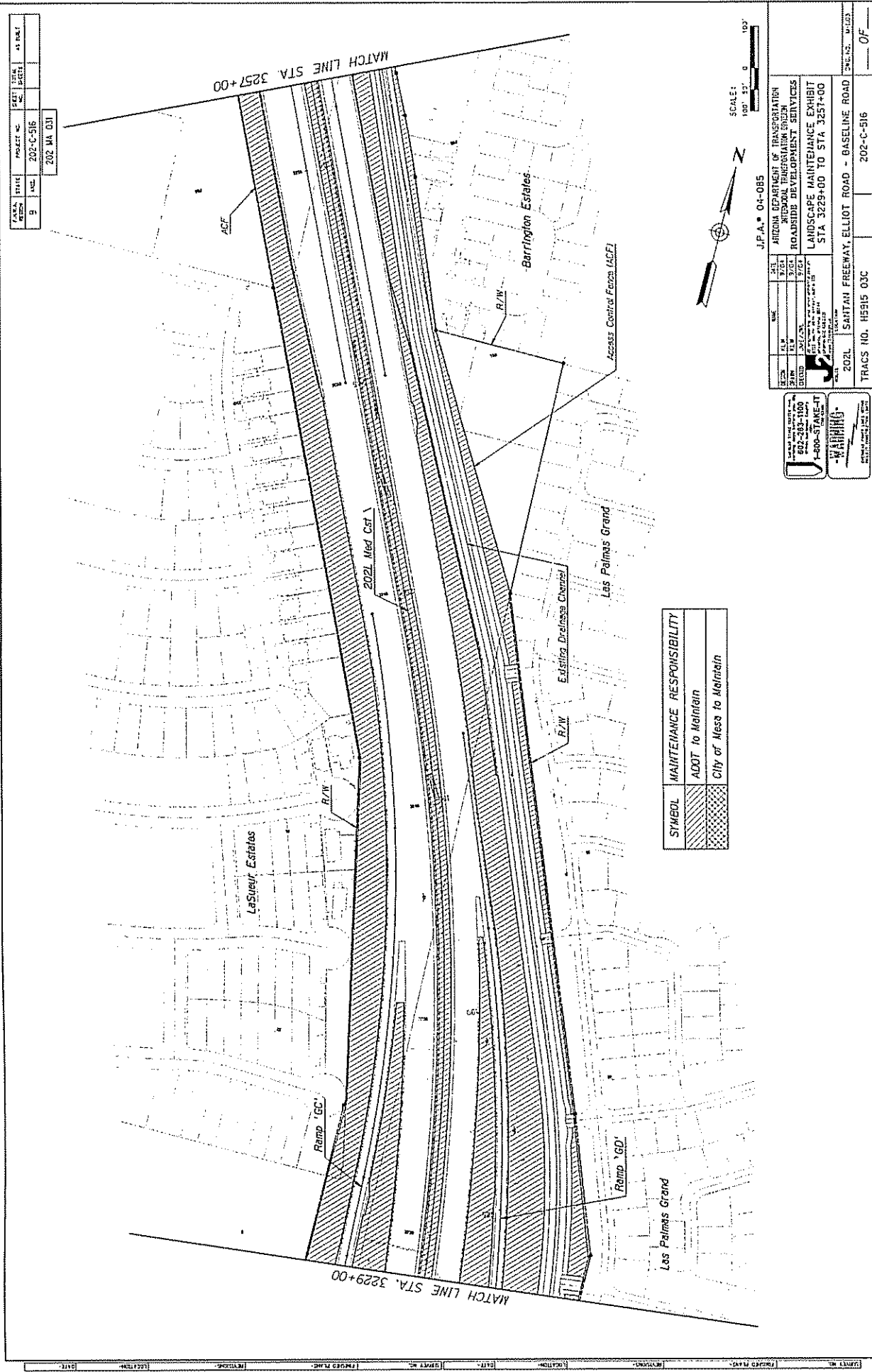
RAM 202-C-516

LANDSCAPE MAINTENANCE EXHIBIT  
J.P.A.# 04-085

ELLIOT ROAD TO BASELINE ROAD







| SYMBOL | MAINTENANCE RESPONSIBILITY |
|--------|----------------------------|
|        | ADOT to Maintain           |
|        | City of Mesa to Maintain   |

|             |            |
|-------------|------------|
| PROJECT NO. | 202-C-516  |
| DATE        | 2021 04 03 |
| BY          |            |
| CHECKED     |            |
| IN CHARGE   |            |



ARIZONA DEPARTMENT OF TRANSPORTATION  
 MICHAEL TRANSPORTATION ENGINEERS  
 ROADSIDE DEVELOPMENT SERVICES  
 LANDSCAPE MAINTENANCE EXHIBIT  
 STA 3229+00 TO STA 3257+00

202L SALTAN FREEWAY, ELLIOT ROAD - BASELINE ROAD

TRACS NO. H5915 03C

202-C-516

OF





RESOLUTION NO. 8393

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE LANDSCAPE MAINTENANCE OF THE SANTAN FREEWAY FROM ELLIOT RD TO BASELINE RD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

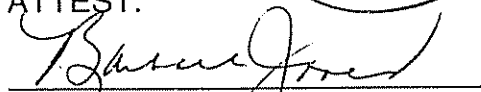
Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the landscape maintenance along the Santan Freeway from Elliot Rd to Baseline Rd (ADOT JPA No. 04-085); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.


PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 18<sup>th</sup> day of January, 2005.



ATTEST:

  
City Clerk

APPROVED:

  
Mayor

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 24<sup>th</sup> day of January, 2005.

Debbie Spurr

City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1411TRN (**JPA 04-085**), an Agreement between public agencies (i.e., The State of Arizona and The City of Mesa), has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 3, 2005

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

Susan E. Davis  
Assistant Attorney General  
Transportation Section